

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ETHAN ROBERT WOODARD,
on behalf of M.W., a minor child,

Plaintiff,

v.

No. 1:22-cv-00405-JHR

UNITED STATES DEPARTMENT OF JUSTICE,
UNITED STATES DEPARTMENT OF HUMAN HEALTH AND SERVICES, and
NEW MEXICO CYFD,

Defendants.

MEMORANDUM OPINION AND ORDER TO SHOW CAUSE

Pro se Plaintiff's Sealed Complaint indicates that Plaintiff is bringing this action "on behalf of [M.W.], a minor child." Sealed Complaint at 1, Doc. 1, filed May 25, 2022. Plaintiff alleges he is the biological father of M.W. and that New Mexico CYFD failed to keep M.W. safe from harm and abuse. There are no factual allegations regarding Defendants United States Department of Justice and United States Department of Human Health and Services. Plaintiff seeks \$5 million "for the abuse and neglect" M.W. endured. Complaint at 3.

It appears this case should be dismissed for failure to state a claim because Plaintiff is bringing this case on behalf of his daughter M.W. "A litigant may bring his own claims to federal court without counsel, but not the claims of others." *Fymbo v. State Farm Fire & Cas. Co.*, 213 F.3d 1320, 1321 (10th Cir. 2000); *see also Kanth v. Lubeck*, 123 Fed.Appx. 921, 923 n.1 (10th Cir. 2005) (stating "as a non-lawyer parent, appearing *pro se*, [plaintiff] may not represent his minor children in federal court") (citing *Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir. 1986) (holding that "under Fed. R. Civ. P. 17(c) and 28 U.S.C. § 1654 [stating parties may plead and

conduct their own cases personally or by counsel], a minor child cannot bring suit through a parent acting as next friend if the parent is not represented by an attorney”)).

The claims against Defendants United States Department of Justice and United States Department of Human Health and Services should be dismissed for failure to state a claim because there are no factual allegations regarding Defendants United States Department of Justice and United States Department of Human Health and Services. A complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe County Justice Center*, 492 F.3d 1158, 1163 (10th Cir. 2007) (“[T]o state a claim in federal court, a complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant’s action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated.”).

The claims against Defendant New Mexico CYFD should be dismissed for failure to state a claim pursuant to 42 U.S.C. § 1983. “It is well established that arms of the state, or state officials acting in their official capacities, are not ‘persons’ within the meaning of § 1983 and therefore are immune from § 1983 damages suits.” *Hull v. State of New Mexico Taxation and Revenue Department’s Motor Vehicle Division*, 179 Fed.Appx. 445, 446 (10th Cir. 2006).

Case Management

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant’s responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the “Local Rules”).

Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (November 2019). The Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure are available on the Court's website: <http://www.nmd.uscourts.gov>.

IT IS ORDERED that:

- (i) Plaintiff shall, within 21 days of entry of this Order, show cause why the Court should not dismiss this case. If Plaintiff asserts the Court should not dismiss this case, Plaintiff shall, within 21 days of entry of this Order, file an amended complaint. Failure to timely show cause and file an amended complaint may result in dismissal of this case.
- (ii) The Clerk shall send to Plaintiff, together with a copy of this Order, the form "Civil Rights Complaint Pursuant to 42 U.S.C. § 1983."



UNITED STATES MAGISTRATE JUDGE